

## Article 28.

### Unauthorized Insurers.

#### **§ 58-28-1. Purpose of Article.**

It is the purpose of this Article to abate and prevent the practices of unauthorized insurers within the State of North Carolina, and to provide methods for effectively enforcing the laws of this State against such practices. The General Assembly finds that there is within this State a substantial amount of insurance business being transacted by insurers who have not complied with the laws of this State and have not been authorized by the Commissioner to do business. These practices by unauthorized insurers are deemed to be harmful and contrary to public welfare of the citizens of this State. The difficulties which arise from the acts and practices of unauthorized insurers are compounded by the fact that such companies may be licensed in foreign jurisdictions and conduct a long-range business without having personal representatives or agents in proximity to insureds. The General Assembly further declares that it is a subject of vital public interest to the State that unlicensed and unauthorized companies have been and are now engaged in soliciting by way of direct mail and other advertising media, insurance risks within this State, and that such companies enjoy the many benefits and privileges provided by the State as well as the protection afforded to citizens under exercise of the police powers of the State, without themselves being subject to the laws designed to protect the insurance consuming public. The provisions of this Article are in addition to all other statutory provisions of Articles 1 through 64 of this Chapter relating to unauthorized insurers and do not replace, alter, modify or repeal such existing provisions. (1967, c. 909, s. 1; 1987, c. 864, s. 46; 1991, c. 720, s. 4.)

#### **§ 58-28-5. Transacting business without a license prohibited; exceptions.**

(a) Except as otherwise provided in this section, it is unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in G.S. 58-28-13 without a license issued by the Commissioner. This section does not apply to the following acts or transactions:

- (1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 21 of this Chapter.
- (2) Contracts of reinsurance; but not including assumption reinsurance transactions, whereby the reinsuring company succeeds to all of the liabilities of and supplants the ceding company on the insurance contracts that are the subject of the transaction, unless prior approval has been obtained from the Commissioner.
- (3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy.
- (4) Transactions in this State involving group life insurance, group annuities, or group, blanket, or franchise accident and health insurance where the master policy for the insurance was lawfully issued and delivered in a state in which the company was authorized to transact business.
- (5) Transactions in this State involving all policies of insurance issued before July 1, 1967.

- (6) The procuring of contracts of insurance issued to a nuclear insured. As used in this subdivision, "nuclear insured" means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.
- (7) Insurance independently procured, as specified in subsection (b) of this section.
- (8) Insurance on vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies.
- (9) Transactions in this State involving commercial aircraft insurance, meaning insurance against (i) loss of or damage resulting from any cause to commercial aircraft and its equipment, (ii) legal liability of the insured for loss or damage to another person's property resulting from the ownership, maintenance, or use of commercial aircraft, and (iii) loss, damage, or expense incident to a liability claim.
- (10) An activity in this State by or on the sole behalf of a captive insurer licensed and subject to regulation in another jurisdiction other than this State that insures solely the risks of the company's parent and affiliated companies or the risks of a controlled unaffiliated business.

(b) Any person in this State may directly procure or directly renew insurance with an eligible surplus lines insurer, as defined in G.S. 58-21-10(3), without the involvement of an agent, broker, or surplus lines licensee, on a risk located or to be performed, in whole or in part, in this State. The person shall, within 30 days after the date the insurance is procured or renewed, file a written report with the Commissioner on forms prescribed by the Commissioner. The report must contain the name and address of the insured; name and address of the insurer; the subject of insurance; a general description of the coverage; the amount of premium currently charged; and any additional information requested by the Commissioner. The report must also contain an affidavit of the insured that states that the full amount or kind of insurance cannot be obtained from insurers that are licensed to do business in this State; and that the insured has made a diligent search among the insurers that are licensed to transact and are actually writing the particular kind and class of insurance in this State. Gross premiums charged for the insurance, less any return premiums, are subject to a tax at the rate of five percent (5%). At the time of filing the report required by this subsection, the insured shall pay the tax to the Commissioner. The Commissioner has the powers specified in G.S. 58-21-90 with respect to the tax levied by this subsection.

(c) This section does not apply to any surviving nonprofit corporation that results from a merger between the nonprofit corporation established by the North Carolina State Bar Council pursuant to Chapter 707 of the 1975 Session Laws of North Carolina and another domestic nonprofit corporation; provided, however, that any such surviving corporation shall register with the North Carolina State Bar Council under G.S. 84-23.1. (1967, c. 909, s. 1; 1971, c. 510, s. 3; 1985, c. 688, s. 2; 1987, c. 727, ss. 4, 5; c. 864, ss. 47, 70; 1991, c. 644, s. 6; 1993, c. 409, s. 26; c. 504, s. 20; 1995, c. 193, s. 30; 1999-219, s. 5.4; 2004-166, s. 4; 2007-305, s. 4; 2008-124, ss. 3.1, 3.2; 2013-116, s. 3.)

§ 58-28-10: Repealed by Session Laws 2008-124, s. 3.5, effective July 28, 2008, and applicable to violations that occur on or after that date.

**§ 58-28-12. Transacting insurance business in this State.**

Definitions. – As used in this section, G.S. 58-28-13, and G.S. 58-28-14:

- (1) "Admitted insurer" means an insurer that is licensed to write insurance in this State.
- (2) "Kind of insurance" means one of the types of insurance specified in G.S. 58-7-15.
- (3) "Nonadmitted insurer" means an insurer that is not licensed to write insurance in this State.
- (4) "Transacting insurance business" or "transact insurance business" means:
  - a. The making of or proposing to make, as an insurer, an insurance contract.
  - b. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
  - c. The solicitation, taking, or receiving of an application for insurance.
  - d. The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for a contract of insurance or any part of the contract of insurance.
  - e. The issuance or delivery in this State of a contract of insurance to a resident of this State or to a person authorized to do business in this State.
  - f. The solicitation, negotiation, procurement, effectuation, or renewal of a contract of insurance.
  - g. The dissemination of information as to coverage or rates; forwarding of an application; delivery of a contract of insurance; inspection of a risk; the fixing of rates; the investigation or adjustment of a claim or loss; the transaction of matters after effectuation of a contract of insurance and arising out of the contract; or any other manner of representing or assisting a person or insurer in transacting insurance business with respect to properties, risks, or exposures located or to be performed in this State.
  - h. The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of this Chapter.
  - i. The offering of insurance or the transacting of insurance business.
  - j. The offering of an agreement or contract which purports to alter, amend, or void coverage of an insurance contract.
  - k. The transaction of any matters before or after the execution of contracts of insurance in contemplation of or arising out of the execution.
  - l. The maintaining of any agency or office in this State where any acts in furtherance of an insurance business are transacted, including the

execution of contracts of insurance with citizens of this State or any other state.

- m. The maintaining of files or records of contracts of insurance in this State. (2008-124, s. 3.4.)

**§ 58-28-13. Placement of insurance business.**

(a) An insurer shall not transact insurance business in this State unless it is an admitted insurer, is exempted by this Article, or is otherwise exempted by this Chapter.

(b) A person shall not transact insurance business or in this State directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, a nonadmitted insurer in the solicitation, negotiation, procurement, or effectuation of insurance, or renewals of insurance; forwarding of applications; delivery of policies or contracts; inspection of risks; fixing of rates; investigation or adjustment of claims or losses; collection or forwarding of premiums; or in any other manner represent or assist the insurer in transacting insurance business.

(c) A person who represents or aids a nonadmitted insurer in violation of this section is subject to penalties or restitution, or both, as set forth in this section.

(d) This section does not prohibit employees, officers, directors, or partners of a commercial insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of the employer, provided that the person's compensation is not based on buying insurance.

(e) The venue of an act committed by mail or any other medium is at the point where the matter transmitted by mail or other medium is delivered or issued for delivery or takes effect.

(f) The remedies prescribed in this section are not exclusive. Penalties may also be assessed under Article 63 of this Chapter or G.S. 58-2-161, or both.

(g) If the Commissioner finds a violation of this section, the Commissioner may order the payment of a monetary penalty after considering the factors in G.S. 58-28-14; or petition the Superior Court of Wake County for an order directing payment of restitution as provided in subsection (i) of this section; or both. The monetary penalty shall not exceed five thousand dollars (\$5,000) for the first offense and shall not exceed ten thousand dollars (\$10,000) for each succeeding offense. Each day during which a violation occurs constitutes a separate violation. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.

(h) Upon petition of the Commissioner, the Superior Court of Wake County may order the person who committed a violation specified in this section to make restitution in an amount that would make whole any person harmed by the violation. The petition may be made at any time and also in any appeal of any order issued by the Commissioner.

(i) Restitution to the Department for extraordinary administrative expenses incurred in the investigation and hearing of the violation may also be ordered by the court in such amount that would reimburse the Department for the expenses.

(j) Nothing in this section prevents the Commissioner from negotiating a mutually acceptable agreement with any person as to any civil penalty or restitution.

(k) The Attorney General of the State of North Carolina at the request of and upon information from the Commissioner shall initiate a civil action in behalf of the Commissioner in any county of the State in which a violation under this section occurs to recover the penalty

provided. Service of process upon the nonadmitted insurer shall be made under G.S. 58-28-40. (2008-124, s. 3.4.)

**§ 58-28-14. Monetary penalty; factors to be considered.**

In determining the amount of the penalty under G.S. 58-28-13, the Commissioner shall consider:

- (1) The amount of money that inured to the benefit of the violator as a result of the violation,
- (2) Whether the violation was committed willfully.
- (3) The prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator.
- (4) The failure of the violator to provide timely and complete responses to the Department's inquiries about the violator's insurance activities in North Carolina.
- (5) The extent and degree to which the violator marketed its insurance product in this State.
- (6) The extent to which the violator's marketing materials, including fax solicitations, Internet Web sites, circulars, or other forms of advertisement or solicitations through any medium, were deceptive or misleading to residents of this State.
- (7) The number of residents of this State who enrolled in the violator's insurance plan.
- (8) The number of policies and amount of insurance coverage issued by the violator to residents of this State.
- (9) The failure of the violator to promptly refund premiums and other consideration paid by residents of this State for insurance coverage issued by the violator upon requests by the residents of this State or the Department.
- (10) The extent and degree of harm to residents of this State. In assessing the extent and degree of harm, the Commissioner shall consider, among other things, the amount of premiums and other consideration paid by residents of this State for coverage issued by the violator, the failure of the violator to pay claims made by residents of this State, and number and dollar amount of claims made by residents of this State that the violator has failed to pay.
- (11) Whether the violator has a prior record of violating this Article or the unauthorized insurance laws of any other state. "Prior record" includes final administrative orders issued by the Commissioner or insurance regulator of any other state; federal or state criminal convictions, including pleas of guilty or nolo contendere; civil judgments; and written settlement agreements of state administrative proceedings, state or federal criminal proceedings, or civil lawsuits against the violator or any entity of which the violator was either a principal or owner. (2008-124, s. 3.4.)

**§ 58-28-15. Validity of acts or contracts of unauthorized company shall not impair obligation of contract as to the company; maintenance of suits; right to defend.**

The failure of a company to obtain a license shall not impair the validity of any acts or contracts of the company. Any person or insured holding contracts of insurance of an unauthorized insurer may bring an action in the courts of this State under the provisions of G.S. 58-16-35 for the enforcement of any rights pursuant to the contract of insurance. The failure of the insurance company to obtain a license shall not prevent such company from defending any action at law or suit in equity in any court of this State so long as the said company fully complies with the provisions of G.S. 58-16-35(c), but no company transacting insurance business in this State without a license shall be permitted to maintain an action at law or in equity in any court of this State to enforce any right, claim or demand arising out of the transaction of such business until such company shall have obtained a license. Nor shall an action at law or in equity be maintained in any court of this State by any successor or assignee of such company on any such right, claim or demand originally held by such company until a license shall have been obtained by the company or by a company which has acquired all or substantially all of its assets. Nothing in this section shall be construed to abrogate the conditions of admission into this State nor to impair the authority of the Commissioner with respect to the issuance of licenses. The Commissioner in considering the issuance of a license shall take into consideration the acts or transactions which an unauthorized company has engaged in in this State prior to its application for a license. (1967, c. 909, s. 1; 1991, c. 720, ss. 4, 56; 1999-132, s. 9.1; 2000-140, s. 12.)

**§ 58-28-20. Cease and desist orders; judicial review.**

(a) Whenever the Commissioner has reasonable grounds to believe that any person is violating or is about to violate G.S. 58-28-5, 58-28-45, or 58-33-95, the Commissioner may, after notice and opportunity for hearing, make written findings and issue and cause to be served upon the person an order to cease and desist violating G.S. 58-28-5, 58-28-45, or 58-33-95.

(b) Until the expiration of the time allowed under G.S. 58-2-75 for filing a petition for review, the Commissioner may at any time, upon notice and in a manner the Commissioner considers proper, modify or set aside in whole or in part any order issued by the Commissioner under this section as follows:

- (1) Any time before the expiration of the time allowed for seeking judicial review, if no petition for review has been filed; or
- (2) If a petition for review has been timely filed, until the transcript of the record in the proceeding has been filed with the Court.

(c) If no petition for judicial review has been filed within the time provided under G.S. 58-2-75, the Commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by the Commissioner under this section, whenever in the Commissioner's opinion conditions of fact or of law have so changed as to require such action or if the public interest requires.

(d) Whenever the Commissioner has evidence that any person has or is violating G.S. 58-28-5 or G.S. 58-28-45, or has or is violating any order or requirement of the Commissioner issued by the Commissioner under this Article, and that the interests of policyholders, creditors, or the public may be irreparably harmed by delay, the Commissioner may issue an emergency cease and desist order that shall become effective on the date specified in the order or upon service of a certified copy of the order upon the person ordered to cease and desist, whichever is later. The emergency cease and desist order shall also include a notice of hearing, which shall be conducted as provided under Article 3A of Chapter 150B of the General Statutes. However, the person ordered to cease and desist under this subsection may request and shall be granted an expedited

review of the order. The emergency order shall remain in effect prior to and during the proceedings, unless modified by the Commissioner as provided under subsection (b) of this section.

(e) Any person required to cease and desist violating G.S. 58-28-5 by an order issued after notice and a hearing under subsection (a) or (d) of this section may seek judicial review of that order under G.S. 58-2-75. (1967, c. 909, s. 1; 1987, c. 864, s. 61; 1989, c. 485, s. 14; 1999-294, s. 6; 2005-217, s. 1; 2007-305, ss. 2, 3.)

**§ 58-28-25:** Repealed by Session Laws 2005-217, s. 2, effective October 1, 2005, and applicable to orders issued on or after that date.

**§ 58-28-30. Penalty.**

Any person who willfully violates a cease and desist order of the Commissioner under G.S. 58-28-20, after it has become final, and while such order is in effect, is subject to the provisions of G.S. 58-2-70. (1989, c. 485, s. 15.)

**§ 58-28-35. Provisions of Article additional to existing law; application.**

The powers vested in the Commissioner by this Article are additional to any other powers to enforce any penalties, fines, or forfeitures authorized by law with respect to transacting the business of insurance without authority. This Article applies to all kinds of insurance, including service corporations that would be subject to Article 65 of this Chapter, HMOs that would be subject to Article 67 of this Chapter, MEWAs that would be subject to Article 49 of this Chapter, and self-insured workers' compensation operations that would be subject to Article 47 of this Chapter or Article 4 of Chapter 97 of the General Statutes. (1989, c. 485, s. 15; 1999-244, s. 9.)

**§ 58-28-40. Service of process on Secretary of State as agent for unauthorized company.**

(a) Any act of entering into a contract of insurance as an insurer or transacting insurance business in this State, as set forth in G.S. 58-28-12 by an unauthorized, foreign or alien company, shall be equivalent to and shall constitute an appointment by such company of the Secretary of State to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it arising out of a violation of G.S. 58-28-5, and any of said acts shall be a signification of its agreement that any such process against it, which is so served, shall be of the same legal force and validity as if in fact served upon the company.

(b) Service of process on the Secretary of State shall be made by the sheriff delivering to and leaving with the Secretary of State duplicate copies of such process, notice or demand. Service shall be deemed complete when the Secretary of State is so served. The Secretary of State shall endorse upon both copies the time of receipt and shall forthwith send one of such copies by registered mail, with return receipt requested, to such insurer at its last known principal place of business as shown on the process, notice or demand served on the Secretary of State. The Commissioner and the Attorney General shall see that such address is included on the process, notice or demand which is served upon the Secretary of State. A copy of the complaint or order of the clerk extending the time for filing the complaint must be mailed to the insurer with the copy of the summons. When a copy of the complaint is not mailed with the summons, the Secretary of State shall mail a copy of the complaint when it is served on him in the same manner as the copy of summons is required to be mailed.

(c) Upon the return to the Secretary of State of the requested return receipt showing delivery and acceptance of such registered mail, or upon the return of such registered mail showing refusal thereof by such unauthorized insurer, the Secretary of State shall note thereon the date of such return to him and shall attach either the return receipt or such refused mail including the envelope, as the case may be, to the copy of the process, notice or demand theretofore retained by him and shall mail the same to the clerk of the court in which such action or proceeding is pending and in respect of which such process, notice or demand was issued. Such mailing, in addition to the return by the sheriff, shall constitute the due return required by law. The clerk of the court shall thereupon file the same as a paper in such action or proceeding.

(d) Service made under this section shall have the same legal force and validity as if the service had been made personally in this State. The refusal of any such unauthorized insurer to accept delivery of the registered mail provided for in subsection (b) of this section or the refusal to sign the return receipt shall not affect the validity of such service; and any foreign or alien insurer refusing to accept delivery of such registered mail shall be charged with knowledge of the contents of any process, notice or demand contained therein.

(e) Whenever service of process is made upon the Secretary of State as herein provided the defendant unauthorized insurer shall have 30 days from the date when the defendant receives or refuses to accept the registered mail containing the copy of the complaint sent as in this section provided in which to appear and answer the complaint in the action or proceeding so instituted. Entries on the defendant's return receipt or the refused registered mail shall be sufficient evidence of such date. If the date of acceptance or refusal to accept the registered mail cannot be determined from the entries on the return receipt or from notations of the postal authorities on the envelope, then the date when the defendant accepted or refused to accept the registered mail shall be deemed to be the date that the return receipt or the registered mail was received back by the Secretary of State.

(f) The court in any action or proceeding in which service is made in the manner provided in the above paragraph may, in its discretion, order such postponement as may be necessary to afford such company reasonable opportunity to defend such action or proceeding.

(g) The Secretary of State shall keep a summarized record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

(h) Nothing herein contained shall limit or affect the right to serve any process, notice or demand to be served upon an insurer in any other manner now or hereafter permitted by law.

(i) No judgment by default shall be entered in any such action or proceeding until the expiration of 30 days from the date of the filing of the affidavit of compliance. (1967, c. 909, s. 1; 1987, c. 864, ss. 62-64; 1991, c. 720, s. 4; 2008-124, s. 3.3.)

#### **§ 58-28-45. Unauthorized Insurers; prohibited acts.**

(a) No person shall in this State act as agent for any insurer not authorized to transact business in this State, or negotiate for or place or aid in placing insurance coverage in this State for another with any such insurer.

(b) No person shall in this State aid any unauthorized insurer in effecting insurance or in transacting insurance business in this State, either by fixing rates, by adjusting or investigating losses, by inspecting or examining risks, by acting as attorney-in-fact or as attorney for service for process, or otherwise, except as provided in this section or in G.S. 58-16-35.



(c) No person shall make, negotiate for or place, or aid in negotiating or placing any insurance contract in this State for another who is an applicant for insurance covering any property or risk in another state, territory or district of the United States with any insurer not authorized to transact insurance business in the state, territory or district wherein such property or risk or any part thereof is located.

(d) Subsections (a), (b), and (c) of this section do not apply to contracts of reinsurance, or to contracts of insurance made through surplus lines licensees as provided in Article 21 of this Chapter, nor do they apply to any insurer not authorized in this State, or its representatives, in investigating, adjusting losses or otherwise complying in this State with the terms of its insurance contracts made in a state wherein the insurer was authorized; provided, the property or risk insured under such contracts at the time such contract was issued was located in such other state. A motor vehicle used and kept garaged principally in another state shall be deemed to be located in such state.

(e) (1) Repealed by Session Laws 1985, c. 666, s. 40.

(2) Such service of process shall be made by delivering and leaving with the Commissioner or to some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The Commissioner shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all such process so served upon him. Such service of process is sufficient provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow. However, no plaintiff or complainant shall be entitled to a judgment by default under this subdivision (2) until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(3) Service of process in any such action, suit or proceeding shall be in addition to the manner provided in the preceding subdivision (2) be valid if served upon any person within this State who, in this State on behalf of such insurer, is

- a. Soliciting insurance, or
- b. Making any contract of insurance or issuing or delivering any policies or written contracts of insurance, or
- c. Collecting or receiving any premium for insurance; and a copy of such process is sent within 10 days thereafter by registered mail by plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such

action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

- d. Nothing in this subsection (e) shall limit or abridge the right to serve process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

(f) No unauthorized insurer shall institute or file, or cause to be instituted or filed, any suit, action or proceeding in this State to enforce any right, claim or demand arising out of the transaction of business in this State until such insurer shall have obtained a license to transact insurance business in this State. Nothing in this subsection shall be construed to require an unauthorized insurance company to obtain a license before instituting or filing, or causing to be instituted or filed, any suit, action or proceeding either in connection with any of its investments in this State or in connection with any contract issued by it at a time when it was authorized to do business in the state where such contract was issued.

- (g) (1) Before any unauthorized insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall either

- a. File with the clerk of the court in which such action, suit or proceeding is pending a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action or
- b. Procure a license to transact the business of insurance in this State.

- (2) The court in any action, suit or proceeding in which service is made in the manner prescribed in subdivisions (2) and (3) of subsection (e) may order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subdivision (1) of this subsection (g) and to defend such action.

- (3) Nothing in subdivision (1) of this subsection (g) shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subdivisions (2) and (3) of subsection (e) on the ground either

- a. That no policy or contract of insurance has been issued or delivered to a citizen or resident of this State or to a corporation authorized to do business therein, or
- b. That such insurer has not been transacting business in this State, or
- c. That the person on whom service was made pursuant to subdivision (3) of subsection (e) was not doing any of the acts enumerated therein.

(h) Except as provided in G.S. 58-33-95, any person violating subsection (a), (b), (c), or (k) of this section shall be guilty of a Class H felony and shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000). Any person violating subsections (e), (f), and (g) of this section shall be guilty of a Class 1 misdemeanor and shall only be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000). For the purposes of the fine imposed by this subsection, each day during which a violation occurs constitutes a separate violation.

(i), (j) Repealed by Session Laws 2007-305, s. 1, effective December 1, 2007, and applicable to offenses or acts committed on or after that date.

(k) No person shall act as an officer, director, or controlling person for a person who is engaged in a violation of subsection (a), (b), or (c) of this section. As used in this subsection, "controlling" has the same meaning as in G.S. 58-19-5(2).

(l) In addition to any other penalties or remedies provided by law, any person who violates this section shall be strictly liable for any losses or unpaid claims if an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance contract issued by or on behalf of the unauthorized insurer in violation of this Article. The liability imposed by this subsection shall be joint and several if more than one person violates this section.

(m) A civil action may be filed under this section regardless of whether a criminal action is brought or a criminal conviction is obtained for the act alleged in the civil action. (1899, c. 54, s. 105; Rev., s. 4763; C.S., s. 6424; 1945, c. 386; 1985, c. 666, ss. 20, 40; 1987, c. 864, s. 17; 1993, c. 539, s. 454; 1994, Ex. Sess., c. 24, s. 14(c); 1999-132, s. 9.1; 2004-166, s. 3; 2007-305, s. 1.)